

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

<b>BRIAN WAYNE CHESSER,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-24-891-HE</b>
	)	
<b>STEVEN HARPE,</b>	)	
	)	
<b>Respondent.</b>	)	

**REPORT AND RECOMMENDATION**

Petitioner Brian Wayne Chesser, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Doc. 1. United States District Judge Joe Heaton referred this matter to the undersigned Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(B)-(C), Docs. 3-4, and the undersigned now considers Petitioner’s application for leave to proceed in forma pauperis (“IFP Motion”), Doc. 6.

**I. Analysis**

Petitioner’s IFP Motion includes a statement from the prison accountant that Petitioner had \$18.58 in his institutional accounts as of October 7, 2024, Doc. 6 at 3, though the financial documents attached to the IFP Motion show an “account balance” of \$116.27 in his institutional accounts as of that date, Doc. 6-1 at 2. Considering either balance, the Court finds that Petitioner is financially able to prepay the \$5.00 filing fee for this proceeding. Because Petitioner has not shown that he qualifies for authorization to proceed without prepayment of the filing fee, Petitioner’s IFP Motion should be denied. *See Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (noting that “to

succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees”); 28 U.S.C. § 1915(a)(1).

## **II. Recommendation and Notice of Right to Object**

For the foregoing reasons, the undersigned recommends that the Court **DENY** Petitioner’s IFP Motion, Doc. 6, and dismiss this action without prejudice unless Petitioner pays the full filing fee of \$5.00 within 21 days of any order adopting this Report and Recommendation. The parties are advised of their right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed with the Clerk of this Court by November 5, 2024. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to timely object to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed in this Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in this matter.

**ENTERED** this 15<sup>th</sup> day of October, 2024.

  
CHRIS M. STEPHENS  
UNITED STATES MAGISTRATE JUDGE